

**Nursing Home Bed Workgroup
Meeting Notes
July 21, 2016**

I. Introductions

a. Attendees of the meeting were:

- i. Marianne Conner, Advantage Living Centers
- ii. Nancy List, McLaren
- iii. Pat Anderson, HCAM
- iv. William Hartung, Health Care Data Consulting
- v. Ryan Tisdale, MDHHS
- vi. Dave Walker, Spectrum Health
- vii. Roger Mali, Mission Point Management
- viii. Monica Harrison, Beaumont
- ix. Laura Funsch, Leading Age Michigan
- x. Lisa Rosenthal, HCR Manor Care
- xi. Umbrin Ateequi, BCBMS
- xii. Dan Wheeler, Wheeler Associates
- xiii. Arlene Elliott, Arbor Advisors
- xiv. Sarah Slocum, SLTCO
- xv. David Williams, WCS
- xvi. Walt Wheeler, Wheeler Associates
- xvii. Melissa Cupp, RWC Advocacy
- xviii. Brenda Rogers, MDHHS
- xix. Beth Nagel, MDHHS
- xx. Joette Laseur, MDHHS

II. Review and Discussion of the Workgroup Charge

a. Charge 1: Review the criteria for NH-HLTUCU replacements and the relocation of beds.

- i. Looking to make sure that the requirements for replacements and relocations meet today's needs.
- ii. Consider changes that would allow for replacements outside of 2 miles to qualify for substantive or non-substantive review instead of requiring potential comparative review. Currently all must be filed under potential comparative which limits filings to only 3 opportunities per year and requires a more complicated CON application.
- iii. Attorney General's office in the past has interpreted the CON statute to require comparative review for replacements outside of 2 miles because the statute specifically precludes comparative review for replacements within 2 miles. It was suggested that this be reviewed again.
- iv. It was also suggested that perhaps the determination of whether or not an application requires comparative review for these replacement CONs (they never could actually be grouped into a comparative group) could be made when the Letter of Intent is processed instead of after the CON is submitted. This would result in them being able to be filed a substantive applications on the first of any month.

b. Charge 2: Review the criteria concerning lease renewal.

- i. Currently any lease renewal that is below the capital expenditure threshold does not require CON approval pursuant to an internal Department policy posted as an advisory on the CON website.
 - ii. Lease renewals beyond the capital expenditure threshold require substantive review.
 - iii. MDHHS feels that facilities are gaming the system by entering into very short term leases to keep the lease and subsequent renewals from exceeding the capital expenditure threshold.
 - iv. This causes concern because facilities are not being brought in under the current CON standards when those short term lease renewals occur as well as a concern about potential instability if the facility or landlord were to decide not to renew the lease.
 - v. It was suggested that perhaps a middle ground would be to require all lease renewals to obtain CON approval but allow them to all be non-substantive reviews.
- c. Charge 3: Review the threshold for high occupancy provisions.
 - i. Currently standards require 97% occupancy for facilities located in urban areas and 92% for facilities in more rural areas.
 - ii. The standards used to require that a facility meeting high occupancy would also have to show that every facility in the planning area also met high occupancy in order to qualify for more beds. It appears that the formula used to calculate how many beds the facility qualifies to add still contains some remnants of the old policy and may need to be updated.
 - iii. The group would like to look at factors that may be resulting in the 97% occupancy threshold being too high (e.g., shorter length of stay, different patient mix, etc.)
- d. Charge 4: Review the special population groups in the addendum.
 - i. Should review if there is still a need for the groups we currently have.
 - ii. Are there new groups that need better access that could be addressed through a special pool (e.g., dialysis, bariatric, and dementia)?
 - iii. Applicants seem to struggle implement beds approved from the TBI/SCI and Ventilator Dependent pools. It was suggested that perhaps facilities don't have a good understanding of what needs to be done to operationalize these beds and perhaps adding some more guidance to the standards might help.
 - iv. Reimbursement for some of the special pool populations is not commensurate with the level of staffing required to care for them and therefore is it likely a component of the lack of implementation.
 - v. May want to remove Hospice pool because Medicaid no longer pays for room and board for these beds, which was the reason the pool was created in the first place.
 - vi. Group needs to contemplate what should happen to any beds that are in a pool that closes.
 - vii. Consider if there is a better formula to use for determining the number of beds in the pool.
 - viii. MDHHS confirmed that there has been activity in each of the existing pools within the past 2 years and therefore no reshuffling of beds is required/allowed under the standards. The Department would like this part of the process to

coincide with the re-running of the bed need methodology every 2 years and may suggest language to align them.

- e. Charge 5: Review the bed need formula and data sources.
 - i. Last year when the bed need methodology was re-run bed need decreased significantly in every county. This happened because the data used to run the methodology started coming from the CON Annual Survey and much of the data submitted in the annual survey was inaccurate. Some facilities did not understand the annual survey data request and some did not respond at all.
 - ii. HCAM worked with the Department and facilities late last year to try to improve the data and it resulted in some improvement to the bed need.
 - iii. 2015 Annual Survey data looks a lot more complete.
 - iv. MDHHS contracts with Paul Delamater (formerly with MSU Department of Geography) to run the bed need methodology. He is re-running it using the 2015 Annual Survey data to see how the numbers look compared to last year. He is also reviewing the methodology itself to see if any improvements in the formula are needed.
 - v. Ongoing concerns with using the CON Annual Survey data are:
 - 1. New facilities getting line take 3-6 months to ramp up occupancy because they don't have CMS certification yet so limited on how many patients they can take without reimbursement.
 - 2. Facilities close mid-year and do not report their data for the part of the year they were open.
 - 3. Hospices are included and they tend to run very low occupancy.
- f. Charge 6: Review quality metrics to determine if they are up-to-date with national NH-HLTCU trends.
 - i. Need to review the Project Delivery Requirements in Section 11 to determine if any updates are needed.
 - ii. CMS is releasing new Conditions of Participation and we should determine if anything from those should be incorporated into the standards.
- g. Charge 7: Revise acquisition requirements to reflect a situation where the NH-HLTCU is being acquired by a new entity that does not currently operate a NH-HLTCU.
 - i. The standards currently allow a new legal entity to acquire an existing nursing home that has code deficiencies and because they are a new legal entity they do not currently have any facilities that disqualify them from meeting the quality requirements.
 - ii. Applicants are gaming the system by creating new legal entities to acquire poor quality facilities to get around the quality requirements.
 - iii. Department would like to consider modifying the standards to only allow the acquisition of a facility that does not have any of the quality deficiencies.
 - iv. Concern was raised that the facilities struggling with quality are the ones that probably need to be acquired the most with the hopes that new ownership would result in improvements to the facility.
- h. Charge 8: Consider any technical or other changes from the Department, e.g., updates or modifications consistent with other CON review standards and the Michigan Public Health Code.
 - i. The Department does not have any specific updates at this time but will watch for changes needed while the group reviews the standards.

III. Next Steps/Assignments

- a. Charge 1
 - i. Department will talk with the Attorney General's office.
- b. Charge 2
 - i. Tulika Bhattacharya will attend the next meeting to discuss the possibility of making all lease renewals non-substantive reviews.
- c. Charge 3
 - i. A subgroup was formed to look at occupancy data and bring back data and a recommendation. The subgroup members are Pat Anderson, William Hartung, Ryan Tisdale, Lisa Rosenthal, Sarah Slocum, and Chad Tuttle.
- d. Charge 4
 - i. A subgroup was formed (same group as Charge 3 above) to develop recommendations on this charge.
 - ii. William Hartung will look at the MDS to see if there are any special groups that should be added.
 - iii. Eric Fischer and Nancy List will talk inquire with their systems to see if the hospitals are struggling to place certain types of patients into long term care.
- e. Charge 5
 - i. Paul Delamater will continue his work and report back to this group at a future meeting.
- f. Charge 6
 - i. William Hartung will bring back recommendations.
- g. Charge 7
 - i. More workgroup discussion.
- h. Charge 8
 - i. Nothing at this time.

IV. Adjournment